

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Application by Verizon New England Inc.,	)	
Verizon Delaware Inc., Bell Atlantic	)	
Communications, Inc. (d/b/a Verizon Long	)	WC Docket No. 02-157
Distance), NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions), Verizon	)	
Global Networks, Inc., and Verizon Select	)	
Services Inc., for Authorization To Provide In-	)	
Region, InterLATA Services in New	)	
Hampshire and Delaware	)	

**COMMENTS OF AT&T CORP.**

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<b>SHORT CITE</b>	<b>FULL CITE</b>
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<i>Georgia/Louisiana 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of BellSouth Corporation et al. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , CC Docket No. 02-35 (rel. May 15, 2002)
<i>Inputs Order</i>	Tenth Report and Order, <i>Federal-State Joint Board on Universal Service</i> , 14 FCC Rcd. 20156 (1999)
<i>KS/OK 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al. for Provision of In-Region InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd. 6237 (2001)
<i>Local Competition Order</i>	First Report and Order, <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 11 FCC Rcd. 15499 (1996), <i>aff'd in part and vacated in part, Iowa Utils. Bd. v. FCC</i> , 120 F.3d 753 (8th Cir. 1997), <i>aff'd in part and rev'd in part, AT&amp;T Corp. v. Iowa Utils. Bd.</i> , 119 S. Ct. 721 (1999), on remand, <i>Iowa Utils. Bd. v. FCC</i> , 219 F.3d 744 (8 <sup>th</sup> Cir. 2000), <i>rev'd, Verizon Communications Inc. v. FCC</i> , 122 S.Ct. 1646, 1678 (2002)
<i>Maine 271 Order</i>	<i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Maine</i> , CC Docket No. 02-61 (rel. June 19, 2002)
<i>Massachusetts 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts</i> , 16 FCC Rcd. 8988 (2001)
<i>New Jersey 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New Jersey Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in New Jersey</i> , WC Docket No. 02-67 (rel. June 24, 2002)

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<i>NY 271 Order</i>	Memorandum Opinion and Order, <i>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</i> , 15 FCC Rcd. 3953 (1999)
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<i>Platform Order</i>	Fifth Report and Order, <i>Federal-State Joint Board on Universal Service</i> , 13 FCC Rcd. 21323 (1998)
<i>Rhode Island 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island</i> , CC Docket No. 01-324 (rel. Feb. 22, 2002)
<i>Second Advanced Services Order</i>	Second Report and Order, <i>Deployment of Wireline Services Offering Advanced Telecommunications Capability</i> , 14 FCC Rcd. 19237 (1999)
<i>South Carolina 271 Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in South Carolina</i> , 13 FCC Rcd. 539 (1997)
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<i>UNE Remand Order</i>	Third Report And Order And Further Notice Of Proposed Rulemaking, <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 15 FCC Rcd. 3696 (1999)

<b>SHORT CITE</b>	<b>FULL CITE</b>
<i>Vermont 271 Order</i>	<i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Vermont, CC Docket No. 02-7 (rel. April 17, 2002)</i>

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Distance), NYNEX Long Distance Company	)	
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Services Inc., for Authorization To Provide In-	)	
Region, InterLATA Services in New	)	
Hampshire and Delaware	)	
	)	

**REPLY COMMENTS OF AT&T CORP.**

Pursuant to the Commission’s Public Notice, AT&T Corp. (“AT&T”) respectfully submits these reply comments in opposition to the joint application of Verizon for authorization to provide in-region, interLATA services in Delaware and New Hampshire.

**INTRODUCTION AND SUMMARY**

The initial comments of other participants, and the various ex parte filings submitted by Verizon since July 17, underscore that Verizon’s UNE prices in Delaware and New Hampshire satisfy neither TELRIC nor any other measure of cost.

**I. VERIZON’S DELAWARE AND NEW HAMPSHIRE SWITCHING-RELATED RATES FAIL THE COMMISSION’S BENCHMARK TEST.**

In its initial comments, AT&T showed that Verizon’s non-loop rates in Delaware and switching rates in New Hampshire fail a benchmark comparison with Verizon’s

corresponding rates in New York.<sup>1</sup> Verizon's ex parte comments fail to refute this showing.

**A. Verizon's Delaware Non-Loop Rates Greatly Exceed Those Of New York On A Cost Adjusted Basis.**

Verizon's non-loop rates in Delaware exceed those in New York by 64 percent. Yet, Verizon's Delaware non-loop costs are only 10 percent above those in New York. *See* Lieberman Decl. ¶ 6. A 10 percent difference in costs obviously cannot justify a 64 percent difference in rates.

Verizon replies, in an ex parte filing on July 30, that the Delaware and NY non-loop rates cannot be compared because Verizon's switching rates in the two states are based on a different mix of technologies: the cost study underlying Verizon switching rates in New York assumed the use of state-of-the art GR-303 DLC interface, while the cost study underlying Verizon's switch rates in Delaware assumed heavy continued reliance on older-generation TR008 interface. This reasoning is a complete bootstrap: Verizon is essentially asking the Commission to excuse the failure of its Delaware rates to satisfy a benchmark comparison on the ground that its Delaware cost study assumed the deployment of obsolete technology, a clear TELRIC violation.<sup>2</sup> By the same illogic, even higher rates could be justified in future cases by assuming in the switching cost study that all switching will be provided by analog or even crossbar equipment.

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<sup>1</sup> AT&T Comments at 1-6 & Lieberman Decl.; *accord*, WorldCom Comments.

<sup>2</sup> Recent state commission decisions in New Jersey and Pennsylvania have found that the forward-looking DLC interface is GR303, not the aging TR008 interface. *See* AT&T Comments at 17-18 (citing decisions). Significantly, another RBOC, BellSouth, has agreed that GR303 is generally the more cost-effective interface today. *Id.*; *see also id.*, Pitts/Baranowski Declaration ¶¶ 18-19.

**B. Verizon's New Hampshire Switching Rates Greatly Exceed Those Of New York On A Cost Adjusted Basis.**

AT&T also showed in its initial comments that benchmarking with Verizon's New York rates cannot uphold Verizon's switching rates in New Hampshire, for Verizon's switching rates are 13% higher in New Hampshire than in New York on a cost adjusted basis. AT&T also explained why it is appropriate in New Hampshire to benchmark Verizon's switching rates separately from its rates for other non-loop UNEs.<sup>3</sup> The Synthesis Model -- the model used to estimate state-to-state cost differences for the Commission's benchmarking analysis -- tends to overstate the costs of transport, masking the New Hampshire switching rate deficiencies, particularly in lower density states.<sup>4</sup> In any event, "TELRIC rates are calculated on the basis of *individual* elements." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1678 (2002) (emphasis added). Hence, a BOC's rates for a network element comply with Checklist Item 2 only if they are "based on the cost . . . of providing . . . *the* network element." 47 U.S.C. § 252(d)(1) (emphasis added). Therefore, to gain § 271 approval, a BOC must show that the rates for *each* of its network elements -- including switching -- complies with TELRIC principles.

Verizon, in an ex parte filing made on August 6, offers three groups of counterarguments. *First*, Verizon asserts that the Commission should reject the possibility that the Synthesis Model overstates transport costs in New Hampshire, because (1) AT&T has supported the Synthesis Model in the past, (2) resolving the accuracy of the transport cost module is beyond the scope of this proceeding, (3) the Synthesis Model does not overstate transport costs in rural states; and (4) New Hampshire is not a rural state. August 6 Verizon Ex Parte at 1-2, 4. *Second*, Verizon

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<sup>3</sup> AT&T Comments at 4-6; Lieberman Decl.

<sup>4</sup> Lieberman Decl. ¶¶ 11-16.

asserts that Verizon's rates for unbundled switching in New Hampshire in fact would satisfy a properly done benchmarking comparison with New York switching rates because the Synthesis Model understates switching costs in rural states. *Id.* at 3 (1<sup>st</sup> full paragraph). *Third*, Verizon contends that whether Verizon's rates for unbundled switching in New Hampshire flunk the New York benchmark test is moot, because CLECs so far have ordered switching in New Hampshire only in combination with transport. *Id.* at 4-6. These arguments are unfounded and largely irrelevant.

**1. Verizon Cannot Satisfy Section 271 Without Offering Unbundled Switching In New Hampshire At Reasonable Prices—Regardless Of Whether CLECs Currently Order It.**

The notion that the Commission should never consider benchmark comparisons of stand-alone switching rates, but only consider switching in combination with transport, ignores the basic competitive policies that are implicit in any rational economic interpretation of Section 271. Section 271(d)(3)(A) entitles a Bell operating company like Verizon to begin providing in-region interLATA service only if the Commission finds (among other things) that the company has satisfied the competitive checklist set forth in Section 271(c)(2)(B). The second item in the checklist, Section 271(c)(2)(B)(ii), requires that the Bell company provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” And Section 252(d)(1) in turn requires that charges for network elements and interconnection shall be “based on the cost . . . of providing . . . *the* network element.” 47 U.S.C. § 252(d)(1) (emphasis added).

Recognizing the separate competitive potential of unbundled switching and unbundled transport, Congress expressly required that each be offered separately, unbundled from the other. Competitive checklist item five requires Bell companies to

offer “[l]ocal transport from the trunk side of a wireline local exchange carrier switch *unbundled from switching or other services.*” 47 U.S.C. § 271(c)(2)(B)(v) (emphasis added). And competitive checklist item six requires Bell companies to offer “[l]ocal switching *unbundled from transport, local loop transmission, or other services.*” *Id.*, § 271(c)(2)(B)(vi) (emphasis added). The competitive potential of unbundling switching and transport will remain stillborn, however, unless each element can be ordered an appropriate separate price. Hence, “TELRIC prices are calculated on the basis of *individual* elements.” *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1678 (2002) (emphasis added).<sup>5</sup>

The Commission’s benchmarking policy is essentially an indirect method of determining whether the price charged for each network element is TELRIC-complaint. Rather than making this determination directly, the Commission has adopted two shortcut presumptions. First, network elements in a particular state will satisfy the statutory cost standard if (a) the same carrier’s prices for network elements have been found to satisfy the cost standard in another state, and (b) the rate-to-cost ratios of the carrier’s prices in the state at issue do not exceed the corresponding ratios in the state where the Commission has already made a direct determination of the carrier’s costs (with the relative costs in the two states based on Commission runs of the Synthesis Model in both state). *See, e.g., KS/OK 271 Order* ¶¶ 82-89; *PA 271 Order* ¶¶ 62-66; *Rhode Island 271 Order* ¶¶ 37-58. Second, if the non-loop rates satisfy a benchmark comparison in the aggregate, each of the individual network elements within this group will be presumed to

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<sup>5</sup> *See also AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999) (“The dictionary definition of ‘unbundled’ (and the only definition given, we might add) matches the FCC’s interpretation of the word: ‘to give separate prices for equipment and supporting services.’”).

satisfy a benchmark comparison individually. *Rhode Island 271 Order* ¶ 40; *New Jersey 271 Order* ¶ 52.

As AT&T witnesses Michael Lieberman and Brian Pitkin explain in their reply declaration, these shortcut presumptions are not without economic logic in appropriate circumstances. If the costs of UNEs in one state bear a known ratio to the costs of UNEs in another, rate benchmarking has obvious merit as a way to simplify the litigation process by not directly determining the costs of UNEs in the second state. Likewise, if CLECs regard two or more UNEs as complementary goods, order them in fixed proportions, and for structural reasons are certain to continue doing so permanently, it is not unreasonable to benchmark the combination of UNEs in the aggregate rather than individually—just as it would not be unreasonable to redefine the combination as a single UNE. These conditions are not satisfied, however, for switching and transport in New Hampshire.<sup>6</sup>

Verizon's evidence that CLECs necessarily will regard Verizon-supplied switching and transport as rigid complements, let alone in fixed proportion, is flimsy or nonexistent. Moreover, it is poor competitive policy to assume that whatever form of CLEC entry occurs today is likely to continue unchanged into the future despite future changes in switching and transport technology.<sup>7</sup>

One of the most important lessons of economic regulation is that regulators, no matter how knowledgeable and prescient, almost always harm competition when they try to anticipate and handicap the future path of competition in an industry, rather than

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<sup>6</sup> Lieberman/Pitkin Reply Decl. ¶¶ 11-12.

<sup>7</sup> Lieberman/Pitkin Reply Decl. ¶ 13.

simply creating a level playing field. As the Commission noted in its *Local Competition Order*:

[G]iven the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.

*Local Competition Order* ¶ 12. Chairman Powell likewise noted three days ago in a speech on spectrum policy, “There is no question that we need to be able to deal with unpredictable and dynamic changes fast enough to be meaningful in the market and meaningful to consumers. . . . The ‘laborious process’ of government command and control ‘has served the country well to this point, but is futilely too slow to rapidly move things to new and better innovative uses.’”<sup>8</sup>

One prediction can safely be ventured, however. If the Commission refuses to scrutinize the cost justification (if any) for Verizon’s switching rates in New Hampshire on the assumption that Verizon’s switching rates in isolation have “no competitive significance,” the Commission’s judgment will be a self-fulfilling prophecy. Whatever promise that switching, unbundled from transport, would have offered as a vehicle for UNE-based entry will be unfulfilled if the Commission prejudices the issue by declining to consider evidence that Verizon’s prices for switching exceed TELRIC-compliant levels.<sup>9</sup>

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<sup>8</sup> “FCC Chairman Michael K. Powell Outlines Critical Elements of Future Spectrum Policy,” FCC New Release issued Aug. 9, 2002, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-225310A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-225310A1.pdf) (site visited Aug. 11, 2002).

<sup>9</sup> Lieberman/Pitkin Reply Decl. ¶ 14.

**2. Verizon's Elaborate Defense of the Synthesis Model *Transport* Costs Provides No Basis For Ignoring Direct Evidence That Verizon's *Switching* Rates In New Hampshire Fail A Benchmarking Comparison With New York.**

Because the cost basis (or lack thereof) of Verizon's prices for unbundled switching has independent economic and regulatory significance under Section 271, Verizon's elaborate defense of the transport cost module of the Synthesis Model is beside the point. Regardless of where Verizon's transport prices in New Hampshire stand in relation to TELRIC, Verizon fails the second checklist item if Verizon's prices in New Hampshire for unbundled switching exceed levels justified by TELRIC (or have not been shown to satisfy TELRIC).

In any event, Verizon's analysis of the transport cost issue bears virtually no likeness to reality. Verizon's suggestion that AT&T's concerns about the accuracy of the transport module of the Synthesis Model are at odds with AT&T's prior "championship" of the Model<sup>10</sup> is Verizon revisionism. Although AT&T believes that the Synthesis Model is an effective and useful tool for many purposes, AT&T has clearly expressed concerns that the Model provides a conservative -- indeed, overstated -- measure of the costs of transport.<sup>11</sup> Likewise, while the Commission has found that the Synthesis Model "accurately reflects the relative cost differences among states," the Commission has never found that it produces accurate cost estimates for the pricing of transport UNEs.<sup>12</sup>

It is Verizon, not AT&T, that is guilty of inconsistency on this issue. Just a few months ago, in the Virginia UNE arbitration that remains pending before the Commission, Verizon assailed the Synthesis Model (including its transport module) as

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<sup>10</sup> August 6 Verizon Ex Parte at 2-3.

<sup>11</sup> Lieberman/Pitkin Reply Decl. ¶¶ 16-17.

<sup>12</sup> See Lieberman/Pitkin Reply Decl. ¶ 21; *Federal-State Joint Board on Universal Service*, Fifth Report and Order, 13 FCC Recd 21323 (1998) ("Platform Order"), ¶ 75.

“incapable of estimating company- and state-specific UNE rates with any accuracy.”<sup>13</sup> The Model, Verizon added, “is not designed to model, nor can it be modified to account for, the costs of the full and robust network that is the focus of UNE proceedings.”<sup>14</sup> The “underlying platform” of the Model “prevents it from accurately measuring the forward-looking costs that Verizon VA or, for that matter, any efficient carrier, would incur in providing the full range of UNEs required by the Commission.”<sup>15</sup> Verizon has never retracted these criticisms. Indeed, in the Virginia UNE arbitration, Verizon supports estimates of transport costs that are only *one third* as high as the estimates obtained by AT&T from the Synthesis Model.<sup>16</sup>

The notion that AT&T’s proffer of a separate benchmark analysis for switching costs amounts to a “full-fledged attack on the use of the Synthesis Model to determine relative cost levels for universal service, benchmarking, or any other purpose,” and exceeds the scope of a Section 271 proceeding (August 6 Verizon Ex Parte at 2), is an attack on a straw man. The relief that AT&T seeks is narrow and specific: to have its direct benchmarking comparison of *switching* rates in New Hampshire vs. New York -- comparisons that themselves rely on the Synthesis Model -- considered rather than ignored. Accepting and considering this evidence does not require the Commission to reach any definitive conclusions about the accuracy of the Synthesis Model transport cost

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<sup>13</sup> *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., & AT&T Communications*, CC Docket Nos. 00-218 and 00-251, Verizon Reply Post-Trial Brief on Cost Issues (Jan. 31, 2002) at 133.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 134.

<sup>16</sup> Lieberman/Pitkin Reply Decl. ¶¶ 18-19.

estimates, let alone venture into the further morass of policy issues conjured up by Verizon.<sup>17</sup>

Finally, Verizon's claim that New Hampshire is not a "very rural" state (August 6 Ex Parte at 3-4) is frivolous. In comparison with New York – the state that Verizon uses as its rate benchmark – New Hampshire has approximately *one-fifth* the number of lines and *one-third* the number of people per square mile.<sup>18</sup>

### **3. New Hampshire Switching Rates Greatly Exceed Those Of New York On A Cost Adjusted Basis.**

Verizon relegates to a single paragraph the only issue in its ex parte filing that matters: whether its switching rates in New Hampshire would in fact pass a properly cost-adjusted comparison between its New York and New Hampshire rates. The Synthesis Model "understates switching costs" in New Hampshire and other rural states, Verizon argues, because the model assumes far less use of host/remote switch architecture than Verizon actually has in place (August 6 Verizon Ex Parte Letter at 3).<sup>19</sup> The host/remote architecture, Verizon adds, is "more expensive than the standard switch architecture." *Id.*

The short answer, of course, is that the host/remote "switch architecture," if "more expensive than the standard switch architecture," is irrelevant. If Verizon is provisioning its switches in an inefficient manner (presumably the case if the Synthesis

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<sup>17</sup> Lieberman/Pitkin Reply Decl. ¶ 23. Verizon's factual assertion that the Synthesis Model provides valid estimates of TELRIC costs for transport because the use of OC-48 transport rings in New Hampshire is efficient and cost-effective (August 6 Ex Parte letter at 2) is simply wrong. *See id.* at ¶¶ 24-25.

<sup>18</sup> Lieberman/Pitkin Reply Decl. ¶¶ 28.

<sup>19</sup> Verizon does not dispute that each switching rate element must be TELRIC-compliant. Indeed, the Supreme court recently explained that "TELRIC rates are calculated on the basis of *individual* elements." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1678 (2002) (emphasis added).

Model uses a more efficient configuration without remotes), then Verizon's existing host/remote relationships should not be considered as part of an evaluation into TELRIC-compliant switching rates. Second, Verizon offers no evidence that a remote configuration is more expensive than the configurations assumed in the Model. Third, Verizon's assertion that "switching usage and port costs will be higher in a rural state ... than in non-rural states," while true, serves to support the switching costs from the Synthesis Model where the switching costs are already much higher in rural areas (on a per-line basis). Fourth, the Synthesis Model uses Verizon's own host-remote relationships and therefore already takes this issue into account by specifically using the LERG host-remote relationships and estimating different investments for each switch type. Thus, none of Verizon's arguments undermine using the switching costs from the Synthesis Model as an appropriate basis for performing a cost-adjusted benchmark comparison between New Hampshire and New York.<sup>20</sup>

## **II. VERIZON'S RECURRING RATES VIOLATE BASIC TELRIC STANDARDS.**

### **A. Verizon's Non-Loop Rates In Delaware Violate Basic TELRIC Standards.**

In its initial comments, AT&T showed that Verizon's recurring rates for switching and other non-loop elements in Delaware are inflated by numerous clear violations of TELRIC. Some of these violations taint only the switching rates; others inflate the rates of every network element that Verizon is required to offer. The resulting cost overrecovery is large.<sup>21</sup>

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<sup>20</sup> Lieberman/Pitkin Reply Decl. ¶¶ 29-31.

<sup>21</sup> AT&T Comments at 19-34; Pitts/Baranowski Decl. ¶¶ 6-8.

Verizon, in its ex parte filings, responds to a single one of these issues: the reasonableness of the switch discounts assumed in the recurring cost study relied on by the Delaware PSC to set Verizon's switching rates in Delaware. Verizon contends that a comparison with the (proprietary) weighted average discounts actually received by Verizon for its switching equipment purchases in 2000 confirms the reasonableness of the switch discounts assumed by the PSC in its cost analysis.

This comparison is meaningless. Switch manufacturers often offer deeper discounts from list prices for new switch equipment than for equipment added to an existing switch ("growth").<sup>22</sup> Verizon's switch purchases in 2000 consist almost entirely of growth equipment, purchased at prices reflecting the discounts available for growth equipment. Verizon's snapshot of its average discounts over this one-year period is irrelevant to the question posed by the TELRIC standard: what is the average discount that an efficient entrant into the local telephone market would obtain over the *long run*.<sup>23</sup> This Commission, for its part, has likewise determined that an all-growth switch purchase price is not TELRIC-compliant.<sup>24</sup> Hence, the average switch discounts obtained by Verizon for its purchases in 2000 provide no evidence that the switch discounts assumed by the Delaware PSC in setting Verizon's UNE prices comply with TELRIC.

**B. Verizon's Recurring Rates For Switching In New Hampshire Were Also Set In Disregard For TELRIC.**

AT&T's initial comments demonstrated that Verizon's recurring rates for switching in New Hampshire are also inflated by clear TELRIC errors. Moreover, the New Hampshire PUC has not even pretended to comply with the Commission's TELRIC

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<sup>22</sup> See Rhode Island 271 Order ¶ 34.

<sup>23</sup> *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 238 (D.Del. 2000).

<sup>24</sup> Rhode Island 271 Order ¶ 34.

requirement that costs for UNEs “be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC’s wire centers.” 47 C.F.R. § 51.505(b)(1).<sup>25</sup> The initial comments of BayRing are in a similar vein, identifying TELRIC violations in the pricing of a variety of UNEs in New Hampshire.<sup>26</sup>

In this context, the perfunctory finding of the New Hampshire PUC that Verizon’s rates satisfy item 2 of the Commission’s competitive checklist<sup>27</sup> should be given little or no weight. The PUC’s endorsement stands out for its grudging and lukewarm tone: while finding that the conditions accepted by Verizon “address the concerns we raised regarding Verizon NH’s Section 271 application in terms of meeting the public interest standard,” the PUC adds that “we have no doubt that New Hampshire ratepayers and the competitive status of telecommunications in New Hampshire would have benefited had Verizon NH been willing to accept our [stricter] conditions as originally set forth.”<sup>28</sup>

The comments of BayRing make clear the source of the PUC’s ambivalence: the PUC’s acquiescence in Verizon’s application resulted not from reasoned conviction, but from Verizon’s raw exercise of political muscle.<sup>29</sup> Verizon’s rejoinder -- essentially that its lobbying was open and legal, that other (politically weaker) parties were also free to lobby the PUC, and that “negotiations and compromise are an inherent part of the balancing process in which state commissions typically engage” -- merely confirms this

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<sup>25</sup> AT&T Comments at 11-19; Pitts/Baranowski Decl. ¶¶ 6-8.

<sup>26</sup> BayRing Comments at 13-19.

<sup>27</sup> NH PUC Comments at 17-18, 20.

<sup>28</sup> NH PUC Comments at 17.

<sup>29</sup> BayRing Comments at 2-11.

fact.<sup>30</sup> So does the PUC's admission that it ultimately abandoned the competitive conditions that Verizon was not "willing to accept."<sup>31</sup>

Verizon asserts that the PUC's ultimate "support" for Verizon's 271 application should be accepted on face value because none of the Commissioners "indicated that their decisions were improperly influenced by political pressure."<sup>32</sup> AT&T respectfully submits that the record, taken as a whole, demonstrates precisely that.

In any event, the New Hampshire PUC's pro forma endorsement of Verizon's 271 application must be disregarded for the further reason that the PUC has not addressed—let alone provided a reasoned response to: the specific criticisms advanced by AT&T against the non-TELRIC rates adopted by the PUC. Specifically: (1) the New Hampshire PUC has never determined whether Verizon's switching rates are TELRIC-compliant, (2) Verizon's switching rates in New Hampshire reflect 1994 or 1995 switch discount percentages, which were already obsolete even by 1998, (3) Verizon's switching cost study modeled technology that was obsolete and overly costly even in 1998, (4) the PUC accepted a common cost factor that is patently violative of TELRIC, (5) Verizon's switching cost study misallocated fixed costs to usage element, and (6) Verizon further overstated its MOU switching costs by overstating its peak capacity requirements.<sup>33</sup> The Consultative Comments of the PUC, like its earlier decisions, offers no response to these points.

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<sup>30</sup> Verizon Ex Parte letter (Aug. 5, 2002) at 7.

<sup>31</sup> NH PUC Comments at 17.

<sup>32</sup> Verizon Ex Parte Letter (Aug. 5, 2002) at 6.

<sup>33</sup> AT&T Comments at 10-19.

### **III. VERIZON'S NONRECURRING CHARGES IN DELAWARE ARE INFLATED BY CLEAR TELRIC ERRORS.**

Verizon's ex parte comments since July 17 in defense of its nonrecurring charges ("NRCs") in Delaware merely underscore their noncompliance with TELRIC. As both the Staff and Hearing Examiner of the Delaware PSC found, the NRCs approved by the PSC reflect not the costs of the most efficient technology currently available -- the standard required by 47 C.F.R. § 51.505(b)(1) -- but instead "what Verizon-DE will actually achieve." The so-called "forward-looking" adjustments accepted by the PSC are a "black box" with no record support. And several of the NRCs approved by the PSC -- particularly those involving field installation activities -- enable Verizon to obtain a double recovery of costs that must be recovered, if at all, through Verizon's recurring charges.<sup>34</sup>

In an ex parte presentation submitted on July 30, 2002, Verizon offers essentially three reasons for upholding its Delaware NRCs: (1) the Commission should find that the NRCs set by the Delaware PSC are TELRIC-compliant because the PSC said that they are; (2) the NRCs are based on the "same" model accepted, with "minor modifications," in the New York and New Jersey UNE proceedings; and (3) any remaining TELRIC violations in the Delaware NRCs were cured by seven adjustments made during the late stages of the Phase II litigation. Verizon also elaborates on these themes with respect to several particular NRCs criticized by AT&T: Verizon's \$9.01 feature change charge, its \$35 hot cut rate, and its field installation NRCs. Verizon's arguments merely underscore the failure of its Delaware NRCs to comply with the TELRIC standard.

(1) Verizon begins by quoting the finding of the Delaware PSC that its Phase II non-recurring rates "reflect cost of performing . . . non-recurring tasks using the 'most

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<sup>34</sup> AT&T Comments at 19-34; *id.*, Walsh Decl. ¶¶ 13-63.

efficient telecommunications technology currently available and the lowest cost network configuration,’ and not simply the cost to Verizon-DE of performing these tasks now or in the future.’”<sup>35</sup> As Richard Walsh explains in his reply declaration (attached hereto), this self-congratulatory portrayal of the PSC’s action is flatly at odds with the record. As with the PSC-prescribed NRCs struck down by the court in *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218 (D. Del. 2000), the current NRCs allow Verizon to recover through its NRCs the costs of its existing manual processes, not the more efficient electronic processes that are now commercially available.<sup>36</sup>

The PSC, while effectively acknowledging this fact, ultimately shrank from doing anything about it. Instead, the PSC made a few minor and arbitrary changes to Verizon’s cost study, declared the results “TELRIC,” and went home. The resulting NRCs -- including Verizon’s \$9.01 charge for feature changes, its NRCs for field installations, and its \$35 rate for hot cuts -- are no closer to TELRIC-compliant than were the Delaware NRCs struck down by the District Court two years ago.<sup>37</sup>

#### **IV. VERIZON’S UNE RATES CREATE A DISCRIMINATORY “PRICE SQUEEZE” IN VIOLATION OF CHECKLIST ITEM 2.**

AT&T showed in its initial comments that Verizon’s UNE rates in Delaware, in conjunction with Verizon’s retail rate in the same state, effect a price squeeze against new entrants, thereby violating the antidiscrimination standard incorporated in Section

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<sup>35</sup> Verizon July 30 Ex Parte (attachment page 3) (quoting Delaware PSC Docket No. 96-324 (Phase II), Findings, Opinion and Order No. 5967 (issued June 5, 2002) at 35.

<sup>36</sup> Walsh Reply Decl. ¶¶ 5-22.

<sup>37</sup> Walsh Reply Decl. ¶¶ 23-38.

271.<sup>38</sup> The initial comments BayRing indicate that a similar price squeeze exists in New Hampshire as well.<sup>39</sup>

## **V. VERIZON'S ENTRY INTO THE INTERLATA MARKET IS INCONSISTENT WITH THE PUBLIC INTEREST.**

For the reasons explained in AT&T's initial comments, the record here precludes any finding that Verizon's entry into the InterLATA market in Delaware or New Hampshire would be consistent with the public interest. InterLATA authorization is not in the public interest unless Verizon's local markets are irreversibly open to competition. Verizon's own data, however, confirm that there has been almost no UNE-based entry in either Delaware or New Hampshire and that competitors have not yet been able significantly and irreversibly to enter the local residential markets in those states. The facilities-based CLECs that Verizon identifies as its competitors in Delaware and New Hampshire states have gone, or are going, out of business or are otherwise in financial distress. The prospects for increased UNE-based competition are also bleak. Since the passage of the Act, all CLECs combined have managed to serve only trivial numbers of UNE-based lines in Delaware and New Hampshire – less than 1% of all lines and close to 0% residential lines.<sup>40</sup>

The Panglossian findings offered by the Department of Justice on the amount of competitive entry and “absence of complaints regarding Verizon's fulfillment of its obligations to open markets” merit little or no weight.<sup>41</sup> The DOJ, by its own admission,

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<sup>38</sup> AT&T Comments at 34-36.

<sup>39</sup> BayRing Comments at iv, 54-70.

<sup>40</sup> AT&T Comments at 36-50; *accord*, Sprint Comments at 11-12.

<sup>41</sup> Evaluation of the Department of Justice at 6-7 (Delaware); *id.* at 9 (New Hampshire).

made no attempt to determine whether Verizon's "prices are appropriately cost-based."<sup>42</sup> That, of course, is the central issue facing the Commission.

Moreover, the comments filed by CLECs that have actually attempted to enter Verizon's local markets in Delaware and New Hampshire paint a far darker portrait of Verizon's operating conditions than the DOJ appears to realize. Negotiations over Verizon's interconnection arrangement with Cavalier, the other UNE provider of residential loops in Delaware, have broken down.<sup>43</sup> Verizon's terms and conditions for provisioning dark fiber in New Hampshire make it essentially unavailable to CLECs.<sup>44</sup> In the same state, Verizon has failed to provide adequate and nondiscriminatory access to high capacity UNE loops and transport,<sup>45</sup> and its provisioning of other UNEs is generally deficient as well.<sup>46</sup> The absence of just and nondiscriminatory terms for entry and interconnection is also confirmed by the lack of entry into Delaware and New Hampshire from out-of-region RBOCs.<sup>47</sup>

Finally, the supposedly "independent" studies offered by Telecommunications Research and Action Center ("TRAC") to show that Verizon's entry into interLATA markets in Delaware and New Hampshire would generate massive savings for retail ratepayers<sup>48</sup> are neither independent nor probative. As Lee Selwyn demonstrates in his attached declaration, TRAC is a Baby Bell front organization, funded and operated by a Washington, DC, public relations firm on behalf of Verizon, Qwest, SBC, BellSouth, and

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<sup>42</sup> *Id.* at 8 & 10.

<sup>43</sup> Cavalier comments.

<sup>44</sup> BayRing comments at v, 29-35.

<sup>45</sup> *Id.* at 35-45.

<sup>46</sup> *Id.* at v-vi, 45-51, 70-90.

<sup>47</sup> Sprint comments at 7-10.

<sup>48</sup> TRAC comments.

their trade association, the United States Telephone Association.<sup>49</sup> And the savings claimed by TRAC are a fiction, contrived by comparing the *lowest* of the rate plans offered by Verizon with a supposed *average* of the rate plans offered by existing interexchange carriers.<sup>50</sup> In the words of New Hampshire Consumer Advocate Michael Holmes, TRAC's claims are "horse feathers."<sup>51</sup>

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<sup>49</sup> Selwyn Reply Decl. ¶¶ 5-9.

<sup>50</sup> *Id.* ¶¶ 10-19.

<sup>51</sup> *Id.* ¶ 4.

## CONCLUSION

For the foregoing reasons, and those stated in AT&T's previous comments, Verizon's application for authorization to provide in-region, interLATA services in Delaware and New Hampshire should be denied.

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August 12, 2002

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Comments of AT&T Corp. was served, by the noted methods, the 12th day of August, 2002, on the following:

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